

**Minutes of the Meeting of the
Nonprofit and Unincorporated Organizations Committee
of the Business Law Section**

Thursday, September 25, 2008, 10:00 am to 12:00 noon

Location:

Portola Hotel & Spa, Cottonwood I & II. (at State Bar Annual Meeting in Monterey)

In attendance were:

Lani Collins
Liz Bluestein
Marty Trupiano
Joel Corwin
Bradbury Clark
Lisa Runquist
Arthur Rieman

Patrick Sternal
Cherie Evans
Gerry Laster
Jenny Kassan
Paul Dostart
Phil Webster

Also present was Todd Vlaanderen, Senior Staff Counsel/ Supervisor, Secretary of State on Expedite and Special Handling Service Changes.

A. Introductions of New Officers/Committee Members

Lani announced that this meeting is Lisa Runquist's last official meeting as Chairperson of the committee. The Committee thanked Lisa for her great work this year. Lani announced that Lisa is now joining the executive committee of the Business Law Section, and will be the liaison to our committee, so Lisa will continue to join our meetings in that capacity.

Lani also announced that the following people will hold the following positions for the upcoming year:

Lani – chair of the committee
Cherie – co-chair - legislation
Joel - co-chair - website
Liz Bluestein – secretary

The committee is still seeking someone to be in charge of committee programs.

B. Updating Roster of Members/Participants

Lani has sent around a roster to members and participants, asking for updated information. Anyone who received a copy of the roster and has not yet replied is asked to please respond with any updates

C. Minutes/Questions and Answers – July 22, 2008

The minutes of the July 22 meeting and a summary of the question and answer sessions with Belinda Johns and David Isaac, are now on the website at: http://www.calbar.ca.gov/calbar/pdfs/sections/buslaw/nonprofit/nonprofit_2008-07-22_minutes.pdf
http://www.calbar.ca.gov/calbar/pdfs/sections/buslaw/nonprofit/2008-07-22_qa-attny-gen.pdf

Lani asked if any committee members had any corrections, none were suggested. Future meetings minutes will be posted on the website after the meetings.

D. Report of Todd Vlaanderen, Senior Staff Counsel/ Supervisor, Secretary of State on Expedite and Special Handling Service Changes.

Todd Vlaanderen gave a report to the Committee with updates from the Secretary of State's office.

1) Contact information. Mr. Vlaanderen provided his contact information as follows:

Phone: (916) 653-7514

Email: Todd.Vlaanderen@sos.ca.gov.

He reported that we are welcome to call with questions or for assistance if needed.

2) Expedite and Special Handling Service Changes. He reported that the announcement of the counter changes has been distributed. The changes were implemented on Sept 15th and are going smoothly.

See Notices of Change at:

http://www.calbar.ca.gov/calbar/pdfs/sections/buslaw/nonprofit/2008-09-25_counter-notice_9-15.pdf

http://www.calbar.ca.gov/calbar/pdfs/sections/buslaw/nonprofit/2008-09-25_2-ccr_21903-219055_9-15.pdf

He also reported that the Secretary of State is receiving only 1 to 3 same-day expedite requests per day. He also reported that the first request was from a nonprofit, and it was turned around within hours.

3) Business Entity Name Regulations Mr. Vlaanderen reported that he sent a pdf to Lani and Joel last week of the text of draft proposed business entity name regulations. The executive office is reviewing the draft and expects to begin publication for comment in a month or two. He stated that the committee could provide comments now directly to him, or can provide public comment when the comment period begins. All comments will be welcome. We agreed that these materials would be posted to the Committee's website.

4) Continued Coordination with Committee. Mr. Vlaanderen stated that he will be willing to keep in contact with the committee, and share with us any concerns the

Secretary of State's office has about articles of incorporation that are being returned, and that he will welcome hearing any concerns we have, including suggestions about articles that are rejected when they should not have been, and trainings for the staff on such items.

E. Program: Governance Issues in the New 990: Does the IRS Have The Right To Tell Nonprofits How They are to be Governed? Presented by Lisa A. Runquist

Lisa Runquist presented information about the new 990. Her materials are posted on the website at:

http://www.calbar.ca.gov/calbar/pdfs/sections/buslaw/nonprofit/2008-09-25_corporate-governance-after-sarbanes_runquist.pdf

As overall comments, Lisa remarked that the completion of the Form 990 should no longer be left up to the CPA only – it will be important for an attorney to review the form and make sure it's done right. All attorneys practicing in this area should be aware of the changes to the 990.

The presentation focused on Part VI of the new form, covering governance and disclosure. She discussed the various questions that require a “yes” or “no” answer as to whether the corporation follows written policies for, e.g., conflict of interest, document retention and whistleblower protection. She discussed with the committee that clients may need assistance in understanding what forms of policies work for their organization, and how to write the required explanation on Schedule O if there is no such written policy.

Follow up from Presentation – SubCommittee to Work on Best Practices for Policies and Procedures Responsive to Part VI.

The committee discussed whether to create sample forms of policies and procedures that are responsive to Part VI of the new Form 990, or to recommend forms that have already been created by others.

Any members who know of good sample policies and procedures either from their own practice or found on-line, are asked to send these to Joel Corwin at jcorwin@corwinlaw.us. As a first step, Joel will gather these, and a subcommittee will review these and see if there are any we can recommend for use as sample forms.

Patrick Sternal, Barbara Rosen, Paul Dostart, Marty Trupiano, Lani Collins, Gerry Laster and Liz Bluestein have agreed to serve on this subcommittee. Any other members that are interested should let Joel know. This subcommittee will as a first step, work on forms of policies as described above, and as a longer-term project, will work with the Taxation Section's Exempt Organizations Committee to

develop best practices for nonprofits including best practices for responses on schedule O to summarize the organization's policies if they are not in writing.

F. Proposed Program from Nonprofit and Unincorporated Organizations Committee for the January 2009 SEI.

Topic: What Your Nonprofit Needs to Know About Government Regulations

Description: Governmental oversight of nonprofits continues to increase. How can your nonprofit remain in compliance? What steps will preserve its exempt status? Come find out! Program Length: 2 hours

The SEI conference is put on by various State Bar Sections. Our committee's proposed topic has been approved, and the Committee seeks speakers. The program will be held in Berkeley, California, January 16-18, 2009.

G. Report on Legislative Proposals

Cherie reported on the status of the Committee's legislative proposals and gave a brief summary of the proposals.

The three new proposals that have been described in previous meetings are awaiting approval at the Board of Governors meeting in November. The proposals have now been circulated for comment to all bar sections, and will be posted to our website in final (proposed) form. The fourth proposal (amending Corporations Code section 5047.5) was an amendment to a proposal already approved last year by the Board of Governors, as such it does not need to be approved again.

Lisa reported that the Board of Governors were impressed by our omnibus proposal and want to use it as an example of how to make complex concepts understandable. She also reported that our committee proposed more changes than any other section this year. The Committee thanked Cherie for all of her hard work pulling these together.

Cherie reported that the legislative subcommittee is still looking for comments of additional things that should be revised in the nonprofit corporations law for next year's proposals. We are still trying to catch up with things that have been changed in the corporations code that are not yet reflected in the nonprofit law. Cherie will send out a request for ideas, and will reconvene the subcommittee in October. If anyone else is interested in being on the legislative subcommittee, please send an email to Cherie, at cherie@evansrosen.com

Cherie also went through the legislative update dated Sept 10, 2008 that has been posted to our website.

H. Report on Scheduling of Outreach Programs

It was reported that the following outreach programs for nonprofits have been scheduled in conjunction with community foundations:

Santa Barbara program October 29

Oakland program Nov 14

San Diego program date pending

The subcommittee working on these programs will be developing uniform materials for use by the various speakers. Cherie and Lisa agreed to permit the speakers to use their materials. The flyer for the Santa Barbara program can be shared to create flyers for later programs

I. Future meetings - proposed schedule:

Future meetings of the committee are scheduled for the following dates and times:

Friday October 24 10:00 a.m. - 12:00 noon – conference call

Thursday December 4 10:00 a.m. - 12:00 noon – Los Angeles

Tuesday, January 20, 2009 – Joint meeting with EO and Attorney General Office and FTB 10:00 a.m. – 1:00 p.m. (Lunch at noon) – Los Angeles

Friday February 27, 2009 10:00 a.m. – 12:00 noon – conference call

Friday April 3, 2009 10:00 a.m. – 12:00 noon – Oakland

Friday May 22, 2009 10:00 a.m. – 12:00 noon – conference call

Tuesday, July 21, 2009– Joint Meeting with EO and Attorney General Office and FTB – Oakland

State Bar Meeting September 2009

J. Committee Programs

A. Recommend Topics (four for upcoming Committee year): Lani asked that committee members submit any topics that people would like to hear presented at the meetings on Dec 4, Feb 27 and May 22.

Lani also noted that we are seeking volunteers for speakers to present topics of interest at the meetings. These presentations generally run from 1/2-1 hour.

Jenny Kassan will present on the topic of Revenue-generating activities on Oct 24

Todd Vlaanderen has agreed to present at the April 3 meeting in Oakland

B. Volunteer to coordinate Committee Programs/Webinars: The committee is still seeking someone to coordinate the topics and presenters for the presentations at the 4 remaining meetings for this year

K. Business Law News

Lani asked committee members who are writing about any substantive topic that would be of interest to the Business Law Section to submit the material for an article in the Business Law News. Our committee has not submitted any items in a while. Any committee members who have written a client newsletter article or alert, or other substantive article is asked to send the item to Lani for potential inclusion in the Business Law News.

L. Substantive E-Bulletins

The committee discussed that our committee mailing list can be used to send out substantive items and not just the meeting agenda. If any committee member has an item that the community should know about, please forward these items by email to Joel Corwin at jcorwin@corwinlaw.us. This can be a short paragraph and an internet link can be included if appropriate.

M. Topics of Interest

The Floor was then opened for Committee members to ask questions or discuss topics of interest to the group

Auction rate securities. Gerry asks whether other nonprofits are encountering problems. Other committee members noted that they had not experienced this issue in the nonprofit context, but commented that it may be appropriate to add to nonprofit investment policies that auction rate securities are not a permitted investment.

Joel asked whether, in following up on the committee's legislative proposal to amend section 20, the committee should put together a best practices form of consent to allow a nonprofit to obtain a consent to electronic notices that would qualify under current section 20 until the new change goes into effect. Brad Clark & Joel Corwin have agreed to work on this, to look at whether it makes sense to have a standard form, and if so, to draft one for committee review and possible adoption.